

**SANITIZED DEC. 04-083 SV – BY GEORGE V. PIPER -- SUBMITTED FOR
DECISION ON 06/16/04 – ISSUED 07/15/04**

SYNOPSIS

SEVERANCE TAX – BURDEN OF PROOF NOT MET – Failure of the Petitioner to prove its only assertion that certain other persons, and not Petitioner, are the entities responsible for payment of the severance taxes in question mandates that the assessment be upheld in its entirety; Petitioner has not shown that the assessment is incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

FINAL DECISION

A tax examiner with the Field Auditing Division of the West Virginia State Tax Commissioner's Office conducted an audit of the books and records of the Petitioner.

Thereafter, on December 12, 2003, the Director of this Division of the Commissioner's Office issued a severance tax assessment against the Petitioner. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 13A of the West Virginia Code. The assessment was for the period of January 1, 1998 through December 31, 2002, for tax, interest, through November 30, 2003, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner on December 30, 2003.

Thereafter, by mail postmarked February 11, 2004, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002].

Subsequently, notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and 121 C.S.R. 1, § 61.3.3 (Apr. 20, 2003).

FINDINGS OF FACT

1. In its petition for reassessment, Petitioner's representative stated that Petitioner had contracts with two lumber companies, concerning which Petitioner was only a subcontractor.

2. At the hearing the tax examiner testified that he picked up Petitioner's sales of logs and pulpwood by utilizing the services of the West Virginia Division of Forestry and that no other party paid the severance tax on the logs and pulpwood cut and sold by the Petitioner.

3. The administrative law judge gave the Petitioner two (2) weeks from the date of the hearing to obtain any proof that any other party had paid severance tax on trees removed from one tract. No such evidence was ever provided.

DISCUSSION

The sole issue to be determined is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part, *see* W. Va. Code § 11-10A-10(e) [2002].

The failure of the Petitioner to support its only assertion that someone else paid the severance tax mandates that the assessment be upheld *in toto*.

CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon a petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to the issue of whether it is the entity liable for severance tax purposes. *See* 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the severance tax assessment issued against the Petitioner for the period of January 1, 1998 through December 31, 2002, for tax, interest, and additions to tax, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], **interest accrues** on this severance tax assessment until this liability is fully paid.